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TITLE 17

PROFESSIONS, OCCUPATIONS, AND BUSINESSES

(CHAPTERS 1-28 IN VOLUME 17A; CHAPTERS 80-107 IN
VOLUME 17C)

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SUBTITLE 2. NONMEDICAL PROFESSIONS

CHAPTER 29

EMBALMERS, FUNERAL DIRECTORS, AND FUNERAL ESTABLISHMENTS

SUBCHAPTER.

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SUBCHAPTER 2 — EMBALMERS AND FUNERAL DIRECTORS LAW — STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

SECTION.

17-29-207. Rules.

17-29-207. Rules.

(a) The State Board of Embalmers and Funeral Directors may promulgate appropriate rules for the transaction of its business and for the betterment and promotion of the standards of service and practice to be followed in the practice of embalming and funeral directing in the State of Arkansas as it deems expedient and consistent with the laws of this state and for the public good.

(b) The board may promulgate rules reasonably necessary to reflect any changes in the law as adopted by the United States Congress or any appropriate agency of the United States Government as it affects funeral establishments, funeral directors, or embalmers and for the purpose of keeping this law consistent with, and compatible to, the laws of the United States.

(c)(1) The board may determine the qualifications necessary to practice the science of embalming or the business of funeral directing, or both, and shall adopt bylaws and rules in connection with the care and disposition of dead human bodies in this state.

(2) The board shall enforce compliance with the laws and rules by those engaged in the science of embalming and business of funeral directing in this state and may transact any other business necessary for carrying out the provisions of this subchapter and § 17-29-301 et seq.

(d)(1) The board may promulgate reasonable rules for the licensing of crematoriums.

(2)(A) Beginning January 1, 1990, a crematorium may not be operated in this state unless licensed by the board, and a person shall not be cremated in this state except at a licensed crematorium.

(B) Violations of this subsection are Class A misdemeanors.

(e)(1) In the interest of public health and to ensure the safe, secure, and timely transportation of dead human bodies in and through Arkansas, the board may license, inspect, and promulgate reasonable rules for any person, partnership, corporation, association, society, or other legal entity engaged in the business of transporting dead human bodies over the public streets and highways of this state.

(2) Violations of rules promulgated under this subsection are Class A misdemeanors.

History. Acts 1983, No. 325, §§ 4, 10; A.S.A. 1947, §§ 71-904, 71-910; Acts 1989, No. 106, § 6; 2011, No. 874, § 1.

Amendments. The 2011 amendment deleted "and regulations" following "rules" in the section heading and throughout (a) through (c); substituted "may" for "is em-

powered to" in (a); substituted "may" for "is expressly authorized and empowered to" in (b); subdivided (c); substituted "may" for "is authorized and empowered to" in (c)(1); and substituted "rules" for "regulations" in (d)(1), (e)(1), (e)(2) and made minor stylistic changes.

17-29-211. Administrative activities.

A.C.R.C. Notes. Acts 2011, No. 150, § 3, provided: "PERSONAL SERVICES. The Burial Association Board Executive Secretary and the Burial Association Board Administrative Specialist III shall also be responsible for the administrative activities of the State Board of Embalmers and Funeral Directors. The State Board of Embalmers and Funeral Directors shall

pay to the Burial Association Board an amount equal to one-half (½) of the salary of the Burial Association Board Executive Secretary, up to one-half (½) of the salary of the Burial Association Board Administrative Specialist III, and the appropriate matching. This sum shall be paid during the first quarter of each fiscal year via fund transfer.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

SUBCHAPTER 3 — EMBALMERS AND FUNERAL DIRECTORS LAW — LICENSING

SECTION.

17-29-304. Funeral establishment — Requirements.

17-29-305. Funeral establishments — Examinations — Licenses.

SECTION.

17-29-306. Renewal.

17-29-311. Violations — Prohibitions.

17-29-304. Funeral establishment — Requirements.

(a) No person shall conduct, maintain, manage, or operate a funeral establishment unless a license for each establishment has been issued by the State Board of Embalmers and Funeral Directors and is displayed in the funeral establishment.

(b)(1) No license shall be issued to operate a full-service funeral establishment by the board unless the establishment has employed a full-time person licensed as a funeral director.

(2) If the establishment is a part of a multiunit enterprise within this state, only one (1) establishment within the multiunit enterprise must have a full-time person licensed as funeral director, provided the full-time licensed person is reasonably accessible to the branch establishment.

(c) Application for the funeral establishment licenses shall be made on forms furnished by the board.

(d) All embalming therein shall be performed by or under the direct supervision of an Arkansas-licensed embalmer.

(e) An establishment in which embalming is conducted shall have a preparation room with a sanitary floor, walls, and ceiling, adequate sanitary drainage and disposal facilities, including running water, and exhaust fans. Such an establishment shall comply with the regulations of the Department of Health for the prevention of the spread of contagious, infectious, or communicable diseases.

(f) Each funeral establishment using an available embalmer shall file with the board a notarized statement signed by the embalmer, stating that his or her services are available to the establishment at all times, and within a reasonable time after death occurs, not to exceed six (6) hours.

(g) A funeral establishment shall contain a casket selection room with a reasonable number of caskets therein. The reasonable number shall be determined by the board. However, if an establishment is a part of a multiunit enterprise, only one (1) establishment in the enterprise need have a selection room if it is within a reasonable distance of other establishments within the multiunit enterprise.

(h) Mobile homes or mobile units are prohibited for use as a funeral establishment or branch thereof. No mobile home or mobile units shall be used for the performance of any function or service of a funeral

establishment except in case of emergency as prescribed by the board. Mobile homes, modular units, manufactured homes, and similar mobile units may be granted a replacement license on a case-by-case basis.

History. Acts 1983, No. 325, § 4; A.S.A. 1947, § 71-904; Acts 1999, No. 1138, § 4; 2003, No. 367, § 3; 2011, No. 874, § 2. deleted “on or before January 1 of each year, and accompanied by the specified fee” at the end of (c).

Amendments. The 2011 amendment

17-29-305. Funeral establishments — Examinations — Licenses.

(a)(1) Funeral establishment licenses shall be issued, upon application to the State Board of Embalmers and Funeral Directors, only after examination of the establishment to be licensed reveals that the requirements of the board for an establishment license have been met. The fee shall accompany the application for a funeral establishment license.

(2) All funeral establishment licenses expire on December 31 of each year.

(3) The board shall grant or deny each application for a license under this section after it is filed.

(4) No person who has filed an application for a license shall be prosecuted for violation of this section unless it is shown that this application was duly denied by the board and that he or she was duly notified of the denial.

(b)(1) When an establishment changes ownership, the board shall be notified in writing within thirty (30) days.

(2) If there is a change in the name of the establishment, a new license shall be issued in the new name if the requirements for licenses as established in this section are met.

History. Acts 1983, No. 325, § 4; A.S.A. 1947, § 71-904; Acts 1997, No. 839, § 4; 1999, No. 1138, § 5; 2011, No. 874, § 3. subdivided (b) and substituted “If there is a change in the name of the establishment” for “At that time” in present (b)(2).

Amendments. The 2011 amendment

17-29-306. Renewal.

(a)(1) Every license holder under this subchapter who wishes to continue the practice of the science of embalming or the business of funeral directing, or both, shall pay a renewal fee to the Secretary-treasurer of the State Board of Embalmers and Funeral Directors on or before December 31 of each year.

(2) A license not renewed by December 31 of any year shall be considered delinquent.

(3) Any person in arrears more than three (3) years shall appear before the board at a regular meeting and pay a delinquency fee determined by rule of the board to be eligible for renewal of a license.

(b)(1) Renewal of a funeral establishment license shall be made on or before December 31 of each year and shall be accompanied by the annual renewal fee prescribed in § 17-29-208.

(2) A license not renewed by December 31 of any year shall be considered delinquent and constitute grounds for disciplinary action by the board.

(c) Failure to receive the renewal notice shall not relieve the licensee or establishment of the duty to pay the renewal fee as prescribed.

History. Acts 1983, No. 325, §§ 4, 7; A.S.A. 1947, §§ 71-904, 71-907; Acts 1997, No. 839, § 5; 2011, No. 874, § 4.

Amendments. The 2011 amendment subdivided (a) and (b); substituted "December 31" for "January 31" throughout (a) and (b); in (a)(1), deleted "the provisions of" preceding "this subchapter," in-

serted "a renewal fee" following "shall pay," and deleted "a renewal fee" from the end; substituted "A license" for "Certificates" in (a)(2); and, in (a)(3), deleted "make application to the board and" preceding "appear before the board" and inserted "and pay a delinquency fee determined by rule of the board."

17-29-311. Violations — Prohibitions.

(a) The State Board of Embalmers and Funeral Directors may issue letters of reprimand or caution, refuse to issue or renew a license, suspend or revoke any license for the practice of embalming or funeral directing, or may place the holder thereof on a term of probation after proper hearing upon finding the holder of the license to be guilty of acts of commission or omission, including the following:

- (1) Conviction of a felony;
- (2) Misrepresentations made or fraud committed as a holder of a license;
- (3) False or misleading advertising;
- (4) Solicitation of dead human bodies by the licensee, his or her agents, assistants, or employees, whether the solicitation occurs after death or while death is impending, provided that this prohibition shall not be deemed to prohibit general advertising;
- (5) Employment directly or indirectly of an apprentice, agent, assistant, employee, or other person on a part-time or full-time basis or on a commission for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;
- (6) The direct or indirect payment or offer of payment of a commission by the licensee, his or her agents, assistants, or employees for the purpose of securing business;
- (7) Allowing personnel unlicensed pursuant to this subchapter to execute contracts for funeral service;
- (8) Aiding or abetting an unlicensed person to practice embalming or funeral directing;
- (9) Violation of any provision of this subchapter and § 17-29-201 et seq.;
- (10) Violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care, transportation, or final disposition of dead human bodies;
- (11) Fraud or misrepresentation in obtaining or renewing a license;
- (12) Refusing to properly release a dead human body to the custody of the person or entity having the legal right to effect such a release if

all other applicable laws and rules have been followed by the holder of the license;

(13) Willful failure to secure a permit for the removal or burial or other disposition of a dead human body;

(14) Knowingly making a false statement on a certificate of death;

(15) Violations of applicable law or regulation with regard to prearranged or prepaid funeral services or funeral merchandise. However, the proper regulatory agency for prearranged or prepaid funeral services or funeral merchandise shall have determined that such a violation has occurred;

(16) Discriminating in services because of race, creed, color, or national origin;

(17) Failure to meet continuing education requirements; or

(18) Failure to answer a complaint within the fifteen-day time period.

(b) No violation of subdivision (a)(4), (a)(5), (a)(6), or (a)(7) of this section shall be deemed to have occurred when in the ordinary course of business a routine sale of a prearranged or a prefinanced funeral or of funeral merchandise shall have been made.

(c) No person licensed pursuant to this subchapter shall remove or embalm a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death until permission of the coroner or medical examiner, or some other fully qualified person acting in such a capacity if there is no coroner or medical examiner, has first been obtained.

(d) A public officer or employee, the official of any public institution, any physician or surgeon, or any other person having a professional relationship with a decedent shall not send or cause to be sent to a funeral establishment or to a person licensed under this subchapter the remains of any deceased person without having first made due inquiry as to the desires of the authorizing agent or agents.

(e) It shall be unlawful for any person, partnership, corporation, or association who has not been licensed or registered as specified in this subchapter to transact, practice, or hold himself or herself or itself out as transacting or practicing embalming or funeral directing or operating or maintaining a funeral establishment within this state.

(f) All dead human bodies not buried or otherwise disposed of within twenty-four (24) hours after death shall be embalmed as prescribed in this subchapter or § 17-29-201 et seq. or stored under refrigeration as determined by the State Board of Health.

(g) It shall be unlawful and a violation of this subchapter and § 17-29-201 et seq. to transport or otherwise transfer by common carrier any dead human body out of the State of Arkansas unless the body has been prepared and embalmed by a licensed embalmer of this state and a transit-burial permit has been issued by the local registrar of the county where death occurred. Any licensee of this state permitting this to be done shall be subject to the punishment spelled out in this subchapter and § 17-29-201 et seq.

(h) It shall be unlawful and a violation of this chapter for any person to engage in the practice of embalming or funeral directing or to hold himself or herself out to the public as a practicing embalmer or funeral director within the State of Arkansas without being the holder of a license.

History. Acts 1983, No. 325, § 11; A.S.A. 1947, § 71-911; Acts 1997, No. 839, § 7; 2003, No. 367, § 4; 2011, No. 874, §§ 5, 6.

Amendments. The 2011 amendment inserted "if all other applicable laws and rules have been followed by the holder of the license" in (a)(12); and substituted

"the authorizing agent or agents" for "the next of kin and of the persons who may be chargeable with the funeral and expenses of the decedent. If any such kin is found, his or her authority and directions shall govern except in those instances in which the deceased made his or her arrangements" in (d).

CHAPTER 30

ENGINEERS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS.
3. REGISTRATION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-30-101. Definitions.

17-30-101. Definitions.

As used in this chapter:

(1) "Consulting engineer" means a professional engineer whose principal occupation is the independent practice of engineering, whose livelihood is obtained by offering engineering services to the public, who serves clients as an independent fiduciary, who is devoid of public, commercial, and product affiliation that might tend to infer a conflict of interest, and who is aware of his or her public and legal responsibilities and is capable of discharging them;

(2) "Engineer-intern" means a person who under this chapter has:

(A) Qualified for an examination authorized by the State Board of Licensure for Professional Engineers and Professional Surveyors in fundamental engineering subjects; and

(B) Passed the examination;

(3)(A) "Firm" means a form of business entity that offers professional engineering services of its licensed personnel to the public.

(B) "Firm" does not include an individual licensee operating under his or her name;

(4)(A) "Practice of engineering" means a service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge in the mathematical, physical, and engineering sciences to services or

creative work such as consultation, investigation, evaluation, planning, and design of engineering works and systems relating to the use of air, land, water, municipal and regional planning, forensic services, engineering teaching of advanced engineering subjects or related courses, engineering surveys, and the inspection of construction to assure compliance with drawings and specifications that are related to public or private service or work, concerning any utilities, structures, buildings, machines, equipment, processes, work systems, or projects including architectural work that is incidental to the practice of engineering.

(B) A person practices or offers to practice engineering, within the meaning of this chapter, who:

- (i) Practices a branch of the profession of engineering;
- (ii) By verbal claim, sign advertisement, letterhead, card, or in any other way represents himself or herself to be an engineer;
- (iii) Through the use of some other title implies that he or she is an engineer or that he or she is licensed under this chapter; or
- (iv) Holds himself or herself out as able to perform or does perform an engineering service or work or any other service designated by the practitioner that is recognized as engineering.

(C) "Practice of engineering" does not include:

- (i) Persons who operate or maintain machinery or equipment; or
- (ii) The act of measuring land, drawing plans, reading plans, or doing other work normally performed by a mechanic, technician, professional surveyor, or draftsman;

(5) "Professional engineer" means a person who has been licensed as a professional engineer by the State Board of Licensure for Professional Engineers and Professional Surveyors; and

(6) "Responsible charge" means direct control of, supervision of, and legal responsibility for all engineering work performed.

History. Acts 1953, No. 214, § 3; 1969, No. 196, § 1; A.S.A. 1947, § 71-1020; Acts 1993, No. 1041, § 1; 2009, No. 444, § 1; 2011, No. 897, § 1.

Amendments. The 2011 amendment inserted "authorized by the State Board of

Licensure for Professional Engineers and Professional Surveyors" in present (2)(A); inserted present (4)(C)(ii); deleted former (4)(D) and made stylistic changes through the section.

SUBCHAPTER 2 — STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

SECTION.

17-30-203. Powers, duties, and proceedings.

17-30-203. Powers, duties, and proceedings.

(a) The State Board of Licensure for Professional Engineers and Professional Surveyors shall:

- (1) Meet at least two (2) times each year;

(2) Have a seal that shall be affixed to each certificate of licensure; and

(3) Require that plans, specifications, plats, and reports issued by a professional engineer are stamped with a board-authorized design seal.

(b) The board:

(1) May determine the persons entitled to be licensed and those whose licenses shall be suspended or revoked;

(2) Shall fix the fees and renewal fees;

(3) Shall hold examinations for applicants for licensure not less than two (2) times a year; and

(4) May do any other things necessary to its duties, including the adoption of rules not inconsistent with this chapter, the Arkansas Constitution, and other laws.

(c)(1) The board may subpoena witnesses and compel their attendance and also may require the production of books, papers, and documents.

(2) A member of the board may administer oaths or affirmations to witnesses before the board.

(d) The expenses incurred by the board for the administration of this chapter may be paid by the board.

History. Acts 1953, No. 214, § 4; 1957, No. 285, § 1; 1969, No. 131, § 1; A.S.A. 1947, § 71-1021; Acts 2009, No. 444, § 3; 2011, No. 897, § 2.

Amendments. The 2011 amendment substituted "that shall be" for "which among other things must be" in (a)(2); in (a)(3), substituted "by a professional engi-

neer are" for "by an engineer shall be," inserted "board-authorized design," and deleted "of a design authorized by the board" following "seal"; deleted "Within the limits prescribed by this chapter" at the beginning of the introductory language of (b); and deleted "and regulations" following "rules" in (b)(4).

SUBCHAPTER 3 — REGISTRATION

SECTION.

17-30-303. Authorization certificates.

17-30-304. Fees — Renewal of certificates — Disposition of funds — Inactive — Reinstatements.

17-30-305. Administrative violations and penalties.

SECTION.

17-30-306. Disciplinary action — Procedures.

17-30-307. Continuing education requirements.

17-30-303. Authorization certificates.

(a)(1) The practice or offer to practice for others, as defined in § 17-30-101, by individuals licensed under this chapter through a firm is permitted if:

(A) The professional engineers of the firm are licensed under this chapter or are practicing under § 17-30-105; and

(B) The firm has been issued a certificate of authorization by the State Board of Licensure for Professional Engineers and Professional Surveyors under this subchapter.

(2) All final drawings, specifications, plans, reports, calculations, or other engineering papers or documents involving the practice of engineering, as defined in this chapter, when issued or filed for public record, shall be dated and bear the signature and seal of the professional engineer qualified in the appropriate branch of engineering who prepared them or under whose immediate direction they were prepared.

(b)(1) A firm desiring a certificate of authorization shall file with the board an application, using the form provided by the board, providing all the information required by the board, and also listing the names and addresses of the individual or individuals duly licensed to practice engineering in this state who shall be in responsible charge of the practice of engineering in the state through the firm, and other information, which must accompany the annual renewal fee.

(2) If there is a change in any of these persons during the year, the change shall be designated on the same form and filed with the board within thirty (30) days after the effective date of the change.

(3) If all of the requirements of this section are met, the board shall issue a certificate of authorization to the firm, and the firm may contract for and collect fees for furnishing engineering services.

(c) This chapter does not prevent a firm from performing engineering services for the firm itself or a subsidiary or an affiliate of the firm.

(d)(1) The firm shall not be relieved of responsibility for the conduct or acts of its agents, employees, officers, or partners by reason of its compliance with this section.

(2) An individual practicing engineering under this chapter shall not be relieved of responsibility for engineering services performed by reason of employment or other relationship with a firm holding an authorization certificate.

(e) A certificate of authorization shall be renewed as provided in this chapter.

(f) An engineer who gives occasional, part-time, or consulting engineering services to or for a firm shall not be designated as being responsible for the professional activities of the firm unless the engineer is an officer or owner of the firm.

(g)(1) The Secretary of State shall not issue a certificate of incorporation to an applicant or a registration as a foreign firm to a firm that includes among the objectives for which it is established any of the words "engineer", "engineering", or any modification or derivation thereof unless the board of licensure for this profession has issued for the applicant a certificate of authorization or a letter indicating the eligibility of the applicant to receive such a certificate.

(2) The firm applying shall supply such a certificate or letter from the board with its application for incorporation or registration.

(h) The Secretary of State shall decline to register any trade name or service mark that includes words as set forth in subsection (g) of this section or modifications or derivatives thereof in its firm name or logos except those firms holding authorization certificates issued under this section.

History. Acts 1993, No. 1041, § 3; 2009, No. 444, § 4; 2011, No. 897, §§ 3, 4.

Amendments. The 2011 amendment deleted "subject to this chapter" in (a)(1); deleted former (a)(1)(A) and redesignated the remaining subdivisions accordingly;

substituted "under this subchapter" for "as hereinafter provided" in present (a)(1)(B); added "unless the engineer is an officer or owner of the firm" in (f) and substituted "shall not" for "may not, for the purpose of this section,".

17-30-304. Fees — Renewal of certificates — Disposition of funds — Inactive — Reinstatements.

(a) The State Board of Licensure for Professional Engineers and Professional Surveyors may establish application fees, certificate fees, and renewal fees as it deems necessary within the guidelines of the State of Arkansas.

(b) The board may establish guidelines and require a demonstration of continuing professional competency as a condition of renewal or relicensure.

(c) All certificates shall be renewed annually or biennially at the discretion of the board.

(d) The fees shall be deposited into a bank designated by the board, and the officer or employee who collects the fees and disburses them shall be required to execute a corporate surety bond for the proper accounting thereof.

(e)(1) A professional engineer or engineer-intern licensed under this chapter who is not engaged in the practice of engineering may request that the board grant him or her inactive status by placing his or her name on the board's inactive roll.

(2) A professional engineer or engineer-intern who is granted inactive status maintains the right to seek active license status at a later time.

(3) A professional engineer whose license is inactive may return to active status by:

(A) Notifying the board in advance of his or her intention to return to active status;

(B) Paying the appropriate fees; and

(C) Meeting all requirements of the board, including demonstration of professional competency.

(4) Inactive status shall continue so long as the license holder pays the annual fee under the board's rules.

(f) A professional engineer or engineer-intern whose license is not renewed may have it reinstated by meeting the requirements of the board depending on the time of nonrenewal under the rules of the board. The requirements the board may consider are:

(1) Payment of fees and penalties;

(2) Demonstration of continuing professional competency; and

(3) Reexamination.

History. Acts 1953, No. 214, § 6; 1969, No. 196, § 3; A.S.A. 1947, § 71-1023; Acts 1993, No. 1041, § 3; 2001, No. 591, § 1; 2009, No. 444, § 4; 2011, No. 897, § 5.

Amendments. The 2011 amendment added “depending on the time of nonrenewal under the rules of the board” in the introductory language of (f) and added “The requirements the board may consider are:”.

17-30-305. Administrative violations and penalties.

(a) The State Board of Licensure for Professional Engineers and Professional Surveyors may suspend, revoke, or refuse to issue, restore, or renew a certificate of licensure of, or place on probation, fine, or reprimand a professional engineer who is:

(1) Found guilty of:

(A) Fraud or deceit in obtaining, attempting to obtain, or renewing a certificate of licensure or certificate of authorization;

(B) Negligence, incompetency, or misconduct in the practice of engineering;

(C) Failure to comply with this chapter, the rules of the board, or an order of the board;

(D) Discipline by another state, territory, the District of Columbia, a foreign country, the United States Government, or any other governmental agency, if at least one (1) of the grounds for discipline is the same or substantially equivalent to those contained in this section;

(E) Failure within thirty (30) days to provide information requested by the board as a result of a formal or informal complaint to the board that would indicate a violation of this chapter;

(F) Knowingly making false statements or signing false statements, certificates, or affidavits to induce payment;

(G) Aiding or assisting another person in violating this chapter or the rules of the board;

(H) Violating a term of probation imposed by the board;

(I) Using a seal or practicing engineering while the professional engineer's license is suspended, revoked, nonrenewed, or inactive;

(J) Signing, affixing the professional engineer's seal, or permitting the professional engineer's seal or signature to be affixed to an instrument of practice that has not been prepared or completely checked by the professional engineer or under the professional engineer's direct supervision or control;

(K) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;

(L) Providing false testimony or information to the board; or

(M) Habitual intoxication or addiction to the use of drugs or alcohol; or

(2) Found guilty of or enters a plea of guilty or nolo contendere to:

(A) A felony;

(B) A crime of which an essential element is dishonesty; or

(C) A crime that is directly related to the practice of engineering.

(b) In addition to any other penalty provided in this section, a person who violates this chapter or a rule of the board shall pay to the board a civil penalty in an amount determined by the board of not more than five thousand dollars (\$5,000) for each offense.

(c)(1) The board shall adopt rules of professional conduct under § 17-30-203 that shall be published in writing to an applicant for licensure under this chapter and published in the roster.

(2) The publication shall constitute due notice to the licensees.

(3) The board may amend the rules of professional conduct from time to time and shall notify each licensee in writing of the amendments.

(d) The board may:

(1) Revoke a certificate of authorization;

(2) Suspend a certificate of authorization for no more than two (2) years of a firm if one (1) or more of its officers or directors have been found guilty of conduct that would authorize a revocation or suspension of the certificate of licensure of the officer or director under this section;

(3) Place a licensee on probation under rules prescribed by the board; or

(4) Levy a fine of not more than five thousand dollars (\$5,000) for each offense.

(e) The board may discipline nonlicensees that violate this chapter by imposing a fine of not more than five thousand dollars (\$5,000) for each offense.

History. Acts 1953, No. 214, § 4; A.S.A. 1947, § 71-1021; Acts 1993, No. 1041, § 3; 2009, No. 444, § 4; 2011, No. 897, § 6.

Amendments. The 2011 amendment rewrote the section heading; substituted “a” for “or any combination of these, any” in the introductory language of (a); deleted “The practice of” from the beginning of (a)(1)(A); substituted “rules of the board, or an order of the board” for “or regulations pertaining to this chapter” in (a)(1)(C); substituted “of the board” for “or regulations pertaining to this chapter” at the end of (a)(1)(G); substituted “an instrument of practice that has not been

prepared” for “any specifications, reports, drawings, plans, design information, construction documents, or calculations, or revisions thereof that have not been prepared” in present (a)(1)(J); inserted “guilty or” in the introductory language of (a)(2); deleted “or regulation” following “rule” in (b); substituted “published” for “made known” in (c)(1); inserted “of the officer or director” in (d)(2); in (d)(3), inserted “a licensee” and substituted “under rules prescribed by” for “for a period of time and subject to such conditions as the board may specify”; and deleted “count or separate” preceding “offense” in (d)(4).

17-30-306. Disciplinary action — Procedures.

(a) The rules promulgated by the State Board of Licensure for Professional Engineers and Professional Surveyors for disciplinary procedures shall be based on and consistent with the model rules of procedure of the Attorney General.

(b) A charge, unless dismissed or settled informally shall be heard by the board within twelve (12) months after the date on which the charge was submitted.

(c) A fine or civil penalty not paid within fifty (50) days after the order becomes final shall constitute a judgment, and the order shall be filed and executed in the same manner as any other judgment of a court of record.

(d) Upon petition of an individual licensee or firm holding a certificate of authorization, the board may reissue a certificate of licensure or

authorization if a majority of the members of the board vote to reissue the certificate of licensure or authorization.

History. Acts 1993, No. 1041, § 3; **Amendments.** The 2011 amendment 2001, No. 591, § 2; 2009, No. 444, § 4; rewrote the section. 2011, No. 897, § 7.

17-30-307. Continuing education requirements.

(a)(1) The State Board of Licensure for Professional Engineers and Professional Surveyors shall issue rules establishing the continuing education requirements for professional engineers and engineer-in-terns.

(2) The rules shall take into account the accessibility to applicants of the board's continuing education requirements.

(3) The rules may:

(A) Rely upon guidelines and pronouncements of recognized educational and professional associations;

(B) Prescribe the content, duration, and organization of courses;

(C) Provide for the relaxation or suspension of requirements for:

(i) Applicants who certify that they do not intend to engage in the practice of engineering; and

(ii) Instances of individual hardship;

(D) Exempt from licensed continuing education requirements a professional engineer sixty-five (65) years of age or older with twenty-five (25) or more years of experience as a practicing professional engineer; and

(E)(i) Prescribe the manner and condition under which credit shall be given for participation in a program of continuing education that the board considers necessary and appropriate to maintain competency in the practice of engineering.

(ii) Examples of programs of continuing education that are acceptable include without limitation programs or seminars sponsored by higher educational institutions, government agencies, and professional engineering organizations and related professions.

(b)(1) An application for renewal of a certificate of licensure shall be accompanied by evidence documenting the completion of acceptable continuing education credit during the previous renewal period.

(2) Failure by an applicant to provide this evidence upon request by the board is grounds for disciplinary action unless the board determines the failure is due to a reasonable cause or the applicant was not engaged in the practice of engineering during the previous renewal period.

(3) The board may renew a certificate of licensure despite an applicant's failure to furnish satisfactory evidence of meeting continuing education requirements and may issue a certificate of licensure to an applicant who has previously maintained inactive status under § 17-30-304 if the applicant follows a particular program or schedule of continuing education prescribed by the board.

History. Acts 2011, No. 897, § 8.

CHAPTER 31

FORESTERS

SUBCHAPTER.

- 2. THE ARKANSAS STATE BOARD OF REGISTRATION FOR FORESTERS.**
- 3. CERTIFICATE OF REGISTRATION.**

SUBCHAPTER 2 — THE ARKANSAS STATE BOARD OF REGISTRATION FOR FORESTERS

SECTION.

17-31-201. Creation — Selection and compensation of members.

17-31-201. Creation — Selection and compensation of members.

(a) The Arkansas State Board of Registration for Foresters is created to administer the provisions of this chapter.

(b)(1) The board shall consist of six (6) members appointed by the Governor, with the advice and consent of the Senate. Each member shall be a citizen of the United States of America and a registered voter and resident of the State of Arkansas.

(2)(A) Five (5) members of the board shall be foresters registered under § 17-31-302 and who have been engaged in forestry for at least twelve (12) years.

(B)(i) One (1) member shall be nominated by the Arkansas Forestry Association to represent the forest products industry.

(ii) One (1) member shall be nominated by the State Forester to represent the Arkansas Forestry Commission.

(iii) One (1) member shall be nominated by the Provost of the University of Arkansas at Monticello from the faculty or staff of the University of Arkansas at Monticello School of Forest Resources.

(iv) One (1) member shall be nominated by the Arkansas Division of the Ouachita Society of American Foresters.

(v) One (1) member shall be nominated by the Arkansas Chapter of the Association of Consulting Foresters to represent private forestry consultants.

(C) At least one (1) member shall be a graduate of the University of Arkansas at Monticello School of Forest Resources.

(3) One (1) member of the board shall not be actively engaged in or retired from the forestry profession. That member shall represent consumers. He or she shall be appointed from the state at large and shall be a full voting member but shall not participate in the grading of examinations.

(c) Appointments shall be for a term of five (5) years or, in the event of vacancies, for the period of the unexpired term of the vacancy being filled.

(d) Each member of the board shall receive a certificate of appointment from the Governor and before beginning the term of office shall file with the Secretary of State a written oath or affirmation relative to the faithful discharge of the official duty.

(e) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1969, No. 535, §§ 4-6; 1971, No. 122, § 1; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; A.S.A. 1947, §§ 6-617 — 6-619, 71-2404 — 71-2406; Acts 1997, No. 250, § 139; 1999, No. 993, § 5; 2011, No. 177, § 1.

Amendments. The 2011 amendment, in (b)(2)(A), substituted “registered” for “who have the qualifications required for registration” and deleted the last sen-

tence; substituted “nominated by the Arkansas Forestry Association to represent” for “selected from” in (b)(2)(B)(i); substituted “nominated by the State Forester to represent” for “selected from” in (b)(2)(B)(ii); rewrote (b)(2)(B)(iii) through (b)(2)(C); deleted “subject to confirmation by the Senate” following “at large” in (b)(3); and deleted (c)(2).

SUBCHAPTER 3 — CERTIFICATE OF REGISTRATION

SECTION.

17-31-302. Qualifications.

17-31-303. Application for registration.

SECTION.

17-31-307. Expiration and renewal.

17-31-302. Qualifications.

The applicant must pass a written examination on basic forestry subjects administered by the Arkansas State Board of Registration for Foresters with a score established by the board along with the following minimum evidence that an applicant is qualified to be registered as a forester:

(1) A bachelor's or advanced degree in forestry from a college or university program accredited by the Society of American Foresters;

(2) A bachelor's or advanced degree in forestry from a college or university program not accredited by the Society of American Foresters and, subject to graduation, three (3) years or more experience in forestry work of a nature satisfactory to the board;

(3) A bachelor's degree in a natural resources-related field from a college or university program, including, but not limited to, wildlife management, with at least twenty (20) semester hours of forestry courses approved by the board and, subsequent to graduation, three (3) years' or more experience in forestry work of a nature satisfactory to the board;

(4) A bachelor's degree not related to natural resources from a college or university program and, subsequent to graduation, six (6) years' or more experience in forestry work of a nature satisfactory to the board; or

(5) A two-year associate's degree in forestry from a community college or junior college and, subsequent to graduation, six (6) years' or more of experience in forestry work of a nature satisfactory to the board.

History. Acts 1969, No. 535, § 13; 1973, No. 245, § 1; A.S.A. 1947, § 71-2413; Acts 1999, No. 993, § 9; 2011, No. 177, § 2.

Amendments. The 2011 amendment rewrote the introductory language; and deleted the last sentence of (1) through (5).

17-31-303. Application for registration.

(a) Application for registration shall:

(1) Be on forms prescribed and furnished by the Arkansas State Board of Registration for Foresters;

(2) Contain statements under oath giving a detailed summary of the applicant's education and technical experience; and

(3) Contain the names and addresses of not fewer than five (5) references, of whom three (3) or more shall be registered foresters who have personal or professional knowledge of the applicant's forestry experience or his or her character and ability.

(b) The amount of the application fee and the registration fee shall be set annually by the board.

(c) A person shall not be eligible for registration as a forester who is not of good character and reputation.

History. Acts 1969, No. 535, § 14; 1971, No. 122, § 2; A.S.A. 1947, § 71-2414; Acts 1999, No. 993, § 10; 2011, No. 177, § 3.

Amendments. The 2011 amendment, in (a)(3), inserted "registered", deleted the last sentence, and made a stylistic change.

17-31-307. Expiration and renewal.

(a) Certificates of registration shall expire on December 31 of the year for which issued or renewed and shall become invalid thereafter unless renewed.

(b) The Secretary of the Arkansas State Board of Registration for Foresters shall notify by letter to the last known address every person registered under this chapter of the date of the expiration of the certificate and the amount of the fee required for its renewal of one (1) year. Notice shall be delivered at least one (1) month in advance of the date of the expiration of such a certificate.

(c)(1) The Arkansas State Board of Registration for Foresters shall require persons who are licensed under this subchapter to complete not fewer than six (6) hours of continuing forestry education during the previous year beginning January 1, 2001, as a condition of license renewal. Continuing forestry education shall be equivalent to the Society of American Foresters Category I for continuing forestry education which includes, but is not limited to, seminars, short courses, and workshops in forestry or a related subject matter as approved by the board.

(2) Credit accrues at a rate of one (1) hour for each hour of actual contact.

(3) The board may approve continuing forestry education courses offered by professional organizations, institutions of higher learning, qualified individuals, or specialty societies. The board may approve

credit hours for meetings, presentations, or other activities considered by the board to be a form of continuing forestry education.

(4) A successful applicant for licensure under this subchapter shall have two (2) years from the date the license is issued to complete the first year's requirements for continuing forestry education. After two (2) years, the registered forester shall complete the continuing forestry education requirements as required by this subsection.

(d) The board may waive the continuing forestry education requirements in cases of hardship, illness, or retirement from active forestry practice.

(e) The board may promulgate rules and regulations to ensure compliance with the requirements of this section.

(f) Renewal of a certificate of registration shall be for a fee set annually by the board.

(g) The failure on the part of any registrant to renew the certificate annually in the month of December as required in this section shall not deprive the person of the right of renewal, but the fee to be paid for the renewal of a certificate after December 31 shall be increased ten percent (10%) for each month or fraction of a month that payment of renewal is delayed. However, the maximum fee for delayed renewal shall not exceed two (2) times the annual renewal fee.

History. Acts 1969, No. 535, § 17; 1971, No. 122, § 3; A.S.A. 1947, § 71-2417; Acts 1999, No. 993, § 11; 2011, No. 177, § 4.

substituted “delivered” for “mailed” in (b); deleted the last sentence in (c)(2); and substituted “year’s requirements for” for “six (6) hours of” in (c)(4).

Amendments. The 2011 amendment

CHAPTER 35

INTERIOR DESIGNERS

SUBCHAPTER.

1. INTERIOR DESIGNERS TITLE REGISTRATION.
3. REQUIREMENTS.

SUBCHAPTER 1 — INTERIOR DESIGNERS TITLE REGISTRATION

SECTION.

- 17-35-101. Short title.
- 17-35-103. Definitions.

SECTION.

- 17-35-104. Exemptions — Use of the title.
- 17-35-105. Penalties.

17-35-101. Short title.

This subchapter and §§ 17-35-301 — 17-35-304 may be cited as the “Arkansas Interior Designers Title Registration Act”.

History. Acts 1993, No. 847, § 1; 2009, No. 1367, § 11; 2011, No. 859, § 3.

substituted “This subchapter” for “Sections 17-35-101 — 17-35-105.”

Amendments. The 2011 amendment

17-35-103. Definitions.

(a) As used in this subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304, “registered interior designer” means a person registered under this subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304.

(b)(1) A registered interior designer is a design professional who is qualified by education, experience, and examination as authorized by an authority.

(2) In general, a registered interior designer performs services including preparation of working drawings and documents relative to non-load-bearing interior construction, materials, finishes, space planning, furnishings, fixtures, and equipment.

(c) Except as provided herein, interior design services do not include services that constitute the practice of architecture as defined in the Arkansas Architectural Act, § 17-15-101 et seq., or the practice of engineering as defined in the Arkansas Engineering Act, § 17-30-101 et seq.

History. Acts 1993, No. 847, § 3; 2009, No. 1367, § 11; 2011, No. 859, § 4.

Amendments. The 2011 amendment, in (a), inserted “this subchapter” preceding “§ 17-15-201 et seq.” in two places and deleted “this subchapter” preceding “§ 17-35-301 — 17-35-304” in two places.

17-35-104. Exemptions — Use of the title.

(a) This subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304 do not apply to persons holding themselves out as “interior decorators” or offering “interior decorating services” such as selection or assistance in selecting surface materials, window treatments, wall coverings, paint, floor coverings, surface-mounted lighting, or loose furnishings not subject to regulation under applicable building codes.

(b) This subchapter and §§ 17-35-301 — 17-35-304 do not apply to architects licensed by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers provided that the architects do not refer to themselves as “registered interior designers” unless registered under this subchapter and §§ 17-35-301 — 17-35-304.

(c) This subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304 do not prevent any person from rendering interior design services, provided such a person does not use the title of “registered interior designer” unless registered under this subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304.

History. Acts 1993, No. 847, § 13; 2009, No. 1367, § 11; 2011, No. 859, § 5.

Amendments. The 2011 amendment substituted “This subchapter, § 17-15-201 et seq.” for “Section 17-15-201 et seq., this subchapter” or variant in (a) and (c); deleted a comma after interior decorator in (a); and substituted “This subchapter, § 17-15-201 et seq.” for “Nothing contained in 17-15-201 et seq., this subchapter” in (c).

17-35-105. Penalties.

It shall be a Class A misdemeanor for a person to:

- (1) Use the title of “registered interior designer”, unless registered under this subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304;
- (2) Present as his or her own the registration of another;
- (3) Give false or forged evidence to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers or any member thereof in obtaining a registration;
- (4) Falsely impersonate any other practitioner of like or different name;
- (5) Use or attempt to use a registration that has been revoked; or
- (6) Otherwise violate any of the provisions of this subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304.

History. Acts 1993, No. 847, § 6; 2009, No. 1367, § 11; 2011, No. 859, § 6.

Amendments. The 2011 amendment inserted “this subchapter” preceding “§

17-15-201 et seq.” and deleted “this subchapter” following “§ 17-15-201 et seq.” in (1) and (6).

SUBCHAPTER 3 — REQUIREMENTS**SECTION.**

17-35-301. Registration of interior designers.

SECTION.

17-35-302. Requirements for registration.

17-35-301. Registration of interior designers.

(a) It is unlawful for a person who is not registered under this subchapter, § 17-15-201 et seq., and § 17-35-101 et seq., as an interior designer to advertise as a registered interior designer or to use the title of “registered interior designer” or any other words, letters, figures, or other devices for the purpose of implying, directly or indirectly, that the person is registered under this subchapter, § 17-15-201 et seq., and § 17-35-101 et seq.

(b) It is unlawful for a company, partnership, association, corporation, or other similar organization, after January 1, 1994, to advertise that it is in a position to provide the services of a registered interior designer unless the persons providing the services are in the responsible charge of a registered interior designer.

(c) An applicant for registration as a registered interior designer shall establish to the satisfaction of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers that the applicant:

- (1) Is at least twenty-one (21) years of age;
- (2) Has not been convicted of an offense that bears directly on the fitness of the applicant to be registered;
- (3) Has passed or supplied proof of passage of the examination required by this subchapter, § 17-15-201 et seq., and § 17-35-101 et seq.; and

(4) Meets any other requirements established by the board.

History. Acts 1993, No. 847, § 9; 2009, No. 1367, § 14; 2011, No. 859, § 7.

Amendments. The 2011 amendment inserted “this subchapter” preceding “§

17-15-201 et seq.” and deleted “and this subchapter” following “§ 17-35-101 et seq.” in two places in (a) and in (c)(3).

17-35-302. Requirements for registration.

(a) Each applicant for registration shall provide substantial evidence to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers that the applicant:

(1)(A) Has passed the examination prepared and administered by the National Council for Interior Design Qualification or its successor in interest.

(B) The applicant shall provide a verification from the National Council for Interior Design Qualification or its successor in interest as proof that he or she passed the examination; and

(2) Is a:

(A) Graduate of a five-year interior design program from an accredited institution and has completed at least one (1) year of diversified and appropriate interior design experience;

(B) Graduate of a four-year interior design program or a master’s degree program in interior design from an accredited institution and has completed at least two (2) years of diversified and appropriate interior design experience; or

(C) Licensed architect certified by the board.

(b) Each interior design program must be accredited by the Council for Interior Design Accreditation or its successor in interest or be an interior design program of an institution accredited by the North Central Association of Colleges and Schools, or a program determined by the board to be substantially equivalent to such accredited programs.

(c) The board may accept satisfactory evidence of registration as an interior designer in another jurisdiction if the jurisdiction’s requirements for registration are equal to or greater than those required for registration in this state at the date of application.

(d) Every registration shall expire annually on a day designated by the board.

History. Acts 1993, No. 847, §§ 8, 11, 14; 2009, No. 1367, § 14; 2011, No. 859, § 8.

Amendments. The 2011 amendment subdivided (a)(2)(A).

CHAPTER 37

PEST CONTROL SERVICES

SUBCHAPTER 2 — LICENSING

17-37-210. Bond and insurance requirements.

CASE NOTES

Suit Against Surety Proper.

Trial court erred in granting a surety's motion to dismiss buyers' claims because the buyers could sue the surety since a surety bond it had issued to an exterminating company was intended to protect members of the public from violations of the law by licensees, and its bond covered the writers of termite reports involved in the lawsuit; although the surety's contract

was with the company, the buyers were members of the class of persons that it was intended to benefit, because the surety issued the bond to an unregistered fictitious name, it would be necessary to further develop the facts as to the identity of the proper principal on the bond. *Gorman v. Gilliam*, 2010 Ark. App. 118, — S.W.3d — (2010).

CHAPTER 38

PLUMBERS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REGULATION BY STATE BOARD OF HEALTH.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-38-107. Service sinks.

17-38-107. Service sinks.

(a)(1) As used in this section, "commercial building" means a building for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses.

(2) "Commercial building" does not include a food service establishment.

(b) A commercial building shall not be required to include a plumbing service sink, either at construction or as part of a renovation or remodeling, if the building owner or an agent of the building owner communicates to the plumbing code official at the time of construction or renovation that the actual or proposed number of persons that will occupy the building is fifteen (15) or less.

(c) For the purposes of determining the minimum number of plumbing service sink fixtures required in a building, the number shall not be determined by using building occupancy loads as calculated in the Arkansas Fire Prevention Code.

History. Acts 2011, No. 1134, § 1.

SUBCHAPTER 2 — REGULATION BY STATE BOARD OF HEALTH

SECTION.

17-38-202. Committee of Plumbing Examiners.

17-38-202. Committee of Plumbing Examiners.

(a)(1) The State Board of Health shall appoint a Committee of Plumbing Examiners consisting of seven (7) voting members, prescribe their qualifications, and assign their duties.

(2) Qualifications of the members of the committee shall be as follows:

(A) Two (2) of the members shall be master plumbers;

(B) One (1) shall be a journeyman plumber;

(C) One (1) shall be a professional engineer as defined in § 17-30-101 with special expertise in plumbing design;

(D) Two (2) shall be consumers; and

(E) One (1) shall be a representative of the Department of Health.

(b) The member from the department shall serve on the committee until replaced by the Director of the Department of Health.

(c) The term of office for the remaining members shall be for a staggered term of four (4) years. The board may remove a member for cause.

(d) When so directed, the committee and other employees of the department shall serve the board in an advisory capacity in the formulating of rules and regulations to be adopted by the board.

(e) Those members of the committee who are not employees of the State of Arkansas may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(f) The Director of the Plumbing and Natural Gas Section of the Department of Health shall serve as executive secretary for the committee.

History. Acts 1951, No. 200, § 3; 1975, No. 902, § 3; A.S.A. 1947, § 71-1207; Acts 1987, No. 816, § 3; 1991, No. 330, § 1; 1997, No. 250, § 144; 2011, No. 897, § 14. subdivided (a) as (a)(1) and (a)(2)(A) through (a)(2)(E); inserted the introductory language of (a)(2); and inserted “as defined in § 17-30-101” in (a)(2)(C).

Amendments. The 2011 amendment

CHAPTER 42

REAL ESTATE LICENSE LAW

SUBCHAPTER.

1. REAL ESTATE LICENSE LAW — GENERAL PROVISIONS.

3. LICENSES.

SUBCHAPTER 1 — REAL ESTATE LICENSE LAW — GENERAL PROVISIONS

SECTION.

17-42-103. Definitions.

17-42-104. Exemptions.

17-42-105. Violations and criminal sanctions.

17-42-106. Injunction.

SECTION.

17-42-107. Capacity to sue and be sued.

17-42-109. Civil penalties for engaging in unlicensed real estate activity.

17-42-110. Broker's price opinions.

17-42-103. Definitions.

As used in this chapter:

(1)(A) "Associate broker" means an individual who has a broker's license and who is employed by a principal broker, or is associated with a principal broker as an independent contractor, and who participates in any activity described in subdivision (9) of this section while under the supervision of a principal broker or executive broker.

(B) An associate broker shall have no supervisory authority over any other licensee;

(2) "Branch office" means a real estate principal broker's office other than his or her principal place of business;

(3) "Classroom hour" means a period of at least fifty (50) minutes, but not more than sixty (60) minutes, of actual classroom instruction with the instructor present;

(4) "Continuing education" means postlicensure education derived from participation in courses in real estate-related subjects that have been approved by the State Board of Private Career Education or that are not required to be approved by the board;

(5) "Continuing education unit" means a period of ten (10) contact hours of actual classroom instruction with the instructor present;

(6)(A) "Executive broker" means an individual who:

(i) Has a broker's license;

(ii) Is employed by a principal broker or associated with a principal broker as an independent contractor; and

(iii) Participates in any activity described in subdivision (9) of this section while under the supervision of a principal broker.

(B) An executive broker may supervise associate brokers and salespersons;

(7)(A) "Licensee" means an individual who holds any type of license issued by the Arkansas Real Estate Commission.

(B) "Licensee" includes a principal broker, an executive broker, an associate broker, and a salesperson.

(C) This chapter does not preclude a licensee from:

(i) Doing business as a professional corporation under § 4-29-101 et seq.; or

(ii) Receiving payment from a real estate firm or principal broker of an earned commission to the licensee's legal business entity if the licensee earned the commission on behalf of the real estate firm or principal broker;

(8) "Participate in a real estate auction" means to do any act or conduct for compensation or the expectation of compensation and designed, intended, or expected to affect the bidding or results of a real estate auction, including without limitation serving as an auctioneer or ringman or encouraging, soliciting, or receiving bids;

(9) "Principal broker" means an individual expecting to act or acting for another for a fee, commission, or other consideration who:

- (A) Sells, exchanges, purchases, rents, or leases real estate;
- (B) Offers to sell, exchange, purchase, rent, or lease real estate;
- (C) Negotiates, offers, attempts, or agrees to negotiate the sale, exchange, purchase, rent, or lease of real estate;
- (D) Lists, offers, attempts, or agrees to list real estate for sale, lease, or exchange;
- (E) Auctions, offers, attempts, or agrees to auction real estate, or participates in a real estate auction;
- (F) Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements to real estate;
- (G) Collects, offers, attempts, or agrees to collect rent for the use of real estate;
- (H) Advertises or holds himself or herself out as being engaged in the business of buying, selling, exchanging, renting, or leasing real estate;
- (I) Assists or directs in the procuring of prospects calculated to result in the sale, exchange, lease, or rent of real estate;
- (J) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, lease, or rent of real estate;

(K) Engages in the business of charging an advance fee in connection with any contract whereby he or she undertakes to promote the sale or lease of real estate either through its listing in a publication issued for such a purpose or for referral of information concerning the real estate to brokers, or both; or

(L) Performs any of the acts described in this subdivision (9) as an employee of or on behalf of the owner of, or any person who has an interest in, real estate;

(10)(A) "Real estate" means an interest in real property.

(B) "Real estate" includes without limitation a leasehold, time-share interval, or an interest in real property that is purchased or sold in connection with the purchase or sale of all or part of the assets, stock, or other ownership interest of a business or other organization;

(11) "Salesperson" means an individual who:

- (A) Has a salesperson's license;
- (B) Is employed by a principal broker or is associated with a principal broker as an independent contractor; and
- (C) Participates in any activity described in subdivision (9) of this section while under the supervision of a principal broker or executive broker;

(12) “Unlicensed real estate activity” means offering or engaging in any practice, act, or operation set forth in subdivision (9) of this section without a valid active Arkansas license issued by the commission; and

(13) “Broker’s price opinion” means an estimate prepared by a licensee that details the probable selling price of real estate and provides a varying level of detail about the real estate’s condition, market, and neighborhood, and information about sales of comparable real estate.

History. Acts 1993, No. 690, § 3; 2007, No. 263, § 1; 2011, No. 762, § 1; 2011, No. 865, § 1.

Amendments. The 2011 amendment by No. 762 added (15) [13].

The 2011 amendment by No. 865 deleted former (2) and (5), added present

(12), and redesignated the remaining subdivisions accordingly; substituted “State Board of Private Career Education” for “board” in present (4); substituted “Arkansas Real Estate Commission” for “commission” in present (7)(A); and rewrote present (10)(A) and (10)(B).

17-42-104. Exemptions.

(a) This chapter does not apply to:

(1) A person not licensed under this chapter who performs any of the acts described in § 17-42-103(9) with regard to the property owned, leased, or purchased by him or her;

(2) An attorney in fact under a duly executed and recorded power of attorney from the owner or lessor authorizing the final consummation by performance of any contract for the sale, lease, or exchange of real estate, provided that the attorney in fact does not receive or have an expectation of receiving a fee, commission, or other consideration, directly or indirectly, for performing the act;

(3) An attorney at law in the performance of his or her duties as an attorney at law;

(4) A person acting as a receiver, trustee in bankruptcy, administrator, executor, or guardian, or while acting under a court order or under the authority of a will or of a trust instrument;

(5) A person acting as a resident manager when the resident manager resides on the premises and is engaged in the leasing of real property in connection with his or her employment;

(6) A person employed only at a salaried or hourly rate to engage in the leasing of real property for or on behalf of a licensed principal broker, the real estate firm of a licensed principal broker, or an owner of real estate, if the person performs one (1) or more of the following activities:

(A) Delivering a lease application, lease, or an amendment to a lease application or lease to any person;

(B) Receiving a lease application, lease, or an amendment to a lease application for delivery to the principal broker, real estate firm, or owner;

(C) Receiving a security deposit, rental payment, or any related payment for delivery to and made payable to the principal broker, real estate firm, or owner;

(D) Acting under the direct written instructions of the principal broker, real estate firm, or owner:

(i) Showing a rental unit to any person; or

(ii) Assisting in the execution of a preprinted lease or rental agreement containing terms established by the principal broker, real estate firm, or owner; or

(E) Conveying information prepared by the principal broker, real estate firm, or owner about a lease application, lease, the status of a security deposit, or the payment of rent to or from any person;

(7) An officer or employee of a federal agency or state government, or any political subdivision, in the performance or conduct of his or her official duties;

(8) A multiple listing service wholly owned by a nonprofit organization or association of real estate licensees;

(9) An officer of a corporation, a member or manager of a limited liability company, a partner of a partnership, or the equivalent of an officer of another form of business entity acting with respect to real property owned or leased by the entity or an affiliated entity under common ownership or in connection with the proposed purchase, sale, rental, or leasing of real property by the entity or affiliate if the acts are not performed by the officer, member, or partner for or in expectation of a commission or other compensation resulting solely from a successful transaction, not including profits and distributions of the entity; or

(10) A person employed primarily at a salaried or hourly rate by a corporation, limited liability company, partnership, or other business entity acting with respect to real property owned or leased by the entity or an affiliated entity under common ownership or in connection with the proposed purchase, sale, rental, or leasing of real property by the entity or affiliate if the:

(A) Acts are not performed by the employee for or in expectation of a commission or other compensation resulting solely from a successful transaction;

(B) Primary business activity of both the entity and affiliated entity is not ownership or acquisition of real estate; and

(C) Employee is not providing real estate services to or on behalf of more than one (1) entity not affiliated by common ownership.

(b) Any real estate broker licensed by the Arkansas Real Estate Commission on or before January 1, 1985, who is engaged in the sale of real estate by auction only is authorized to employ real estate salespersons to work under the license of the broker even though the broker is employed in a non-real estate-related field and is only a part-time broker.

History. Acts 1993, No. 690, § 4; 2007, No. 263, § 2; 2011, No. 865, § 2; 2011, No. 883, § 1.

A.C.R.C. Notes. Acts 2011, No. 883, § 1 omitted language without striking through previously existing language in

amending §17-42-104(a)(9). A.C.R.C. staff has determined that the omitted language was intended to be repealed language and § 17-42-104(a)(9) is set out to reflect that intent.

Amendments. The 2011 amendment

by No. 865 substituted “§ 17-42-103(9)” for “§ 17-42-103(12)” in (a)(1).

The 2011 amendment by No. 883 rewrote (a)(9); and added (a)(10).

17-42-105. Violations and criminal sanctions.

(a) It is unlawful to:

(1) Engage in unlicensed real estate activity; or

(2) Violate this chapter:

(A) Individually; or

(B) As an officer, agent, or member of a firm, corporation, partnership, copartnership, association, limited liability company, or other entity by participating in or being an accessory to a violation of this chapter by the firm, corporation, partnership, copartnership, association, limited liability company, or other entity.

(b) A commissioner of the Arkansas Real Estate Commission, the Executive Director of the Arkansas Real Estate Commission, a commissioner's designee, the Executive Director's designee, or any licensee residing in the county where the violation occurs may by affidavit institute criminal proceedings for a violation of this chapter without filing a bond for costs.

(c) The prosecuting attorney for each county shall prosecute any violation of this chapter that occurs in his or her county.

(d) A violation of this chapter is a Class D felony.

History. Acts 1993, No. 690, § 20; 2011, No. 865, § 3.

Amendments. The 2011 amendment added “Violations and” to the section heading; combined and rewrote former (a)

and (b) as (a) and redesignated the remaining subsections accordingly; substituted “a commissioner's designee, the Executive Director's designee” for “or other designee” in present (b); and added (d).

17-42-106. Injunction.

(a) If the Arkansas Real Estate Commission has reason to believe that a person has violated a provision of this chapter, the commission or its designee may bring an action in the circuit court of any county in which the person resides or does business to enjoin the person from continuing, engaging in, or doing any act or acts in furtherance of the violation.

(b) In any action under this section, the circuit court of any county in which the person resides or does business may enter a preliminary injunction, a final injunction, or an order for any other appropriate relief.

History. Acts 1993, No. 690, § 21; 2011, No. 865, § 4.

Amendments. The 2011 amendment rewrote the section.

17-42-107. Capacity to sue and be sued.

(a) An action or suit shall not be instituted, nor recovery be had, in any court of this state by any person or other legal entity for compensation for performance of any acts described in § 17-42-103(9) unless at

the time of offering to perform and performing any such act or procuring any promise to contract for the payment of compensation for any such contemplated act:

(1) The person holds an active license under this chapter as a principal broker; or

(2) The person or other legal entity was the owner of the real estate firm that contracted for or otherwise performed the acts for the compensation that is the subject of the action or suit through either a principal broker or a person approved by the Arkansas Real Estate Commission under § 17-42-301(f) while licensed or approved by the commission at the time of the acts.

(b) No salesperson, executive broker, or associate broker may sue in his or her own capacity for the recovery of fees, commissions, or compensation for services as a salesperson, executive broker, or associate broker unless the action is against the principal broker with whom he or she is licensed or was licensed at the time the acts were performed.

(c)(1) As used in this subsection, “systematic residential rental property inspection program” means a program that requires all persons who reside outside of the State of Arkansas and are owners of residential rental property located within the corporate limits of a municipality in this state to designate an agent for service of process.

(2) In any municipality that has established a systematic residential rental property inspection program, a licensee as defined under § 17-42-103 shall not have criminal or civil liability to the municipality, to the nonresident owner, or otherwise for any action or inaction of the municipality or owner:

(A) When acting as an agent for service of process for a nonresident owner;

(B) Arising from the agent’s performance of duties as the agent for service of process; and

(C) If within three (3) business days of receipt of service of process or at other times established by ordinance in effect as of August 12, 2005, the licensee sends the service of process to the last known address of the nonresident owner.

(3) This subsection supersedes any provision of common law to the contrary.

History. Acts 1993, No. 690, § 8; 2001, No. 1172, § 1; 2005, No. 1840, § 1; 2011, No. 865, § 5.

Amendments. The 2011 amendment substituted “§ 17-42-103(9)” for “§ 17-42-103(12)” in (a).

17-42-109. Civil penalties for engaging in unlicensed real estate activity.

(a) If after notice and a hearing in accordance with this chapter and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Arkansas Real Estate Commission finds that a person has engaged in unlicensed real estate activity, the commission may impose a civil

penalty of no more than five thousand dollars (\$5,000) and assess costs against the person.

(b) The fact that a person offers to engage in or offers to perform any practice, act, or operation set forth in § 17-42-103(9) without a license is prima facie evidence that the person is engaged in unlicensed real estate activity.

(c) In addition to civil penalties imposed under this section, the commission may require the person engaged in unlicensed real estate activity to reimburse any compensation, fees, or other remuneration collected during the unlicensed real estate activity.

History. Acts 2011, No. 865, § 6.

17-42-110. Broker's price opinions.

(a) A licensee may prepare, provide, and collect a fee for issuing a broker's price opinion for:

(1) An existing or potential seller for the purposes of listing and selling real estate;

(2) An existing or potential buyer of real estate;

(3) A third party making decisions or performing due diligence related to the potential listing, offering, sale, exchange, option, lease, or acquisition price of real estate; or

(4)(A) An existing or potential lienholder.

(B) However, a broker's price opinion prepared for an existing or potential lienholder in conjunction with the purchase of a buyer's principal residence shall not be used as the primary basis to determine the value of the buyer's principal residence for the purpose of a loan origination of a residential mortgage loan secured by the buyer's principal residence.

(b) The Arkansas Real Estate Commission may prescribe rules for the preparation and issuance of a broker's price opinion.

(c) Licensees shall have the authority to prepare and provide broker price opinions pursuant to this section, notwithstanding the provisions of § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.

(d) A broker's price opinion or market analysis issued by a real estate licensee shall not contain the terms "market value", "appraised value", or "appraisal".

History. Acts 2011, No. 762, § 2.

SUBCHAPTER 3 — LICENSES

SECTION.

17-42-301. License required — Violations.

17-42-316. Agency relationship and duties generally.

17-42-317. Representing seller or lessor in an agency relationship.

SECTION.

17-42-318. Representing buyer or lessee in an agency relationship.

17-42-319. Waiver of agency duties.

17-42-301. License required — Violations.

(a) No person shall practice or represent himself or herself as a real estate broker or salesperson without first applying for and receiving a license to practice under this chapter.

(b) Any person who directly or indirectly for another with the intention, or on the promise of receiving any valuable consideration, offers, attempts, or agrees to perform any single act described in § 17-42-103(9), whether as part of a transaction or as an entire transaction, shall be deemed a broker or salesperson within the meaning of this chapter.

(c) The commission of a single act by a person required to be licensed under this chapter and not so licensed shall constitute a violation of this chapter.

(d) It shall be unlawful for any person, directly or indirectly, to act as a real estate broker or salesperson without first obtaining a license and otherwise complying with the provisions of this chapter.

(e)(1) Notwithstanding the provisions of this section, a person or other legal entity not licensed by the Arkansas Real Estate Commission may own a real estate firm, provided the employees or agents employed by or associated with the firm who perform real estate activities identified under § 17-42-103(9) hold an active license under this chapter.

(2) The firm may enter into contracts or otherwise perform activities identified under § 17-42-103(9) only through a principal broker and a licensee employed by or associated with the principal broker that holds an active license issued by the commission at the time of performing the contract or activities.

(f) The commission may provide for the continuing temporary operation of a real estate firm having all rights under § 17-42-107(a) upon the death, resignation, termination, or incapacity of the principal broker or upon the closing of a real estate firm, under the direction of a person approved by the commission, subject to time limitations and other conditions imposed by the commission.

History. Acts 1993, No. 690, § 2; 2001, No. 1172, § 2; 2011, No. 865, §§ 7, 8. substituted “§ 17-42-103(9)” for “§ 17-42-103(12)” in (b), (e)(1), and (e)(2).

Amendments. The 2011 amendment

17-42-316. Agency relationship and duties generally.

(a) The common law of agency under Arkansas as supplemented by this section applies to the relationship between a licensee and the licensee’s client.

(b)(1) In accepting employment by a client, a licensee pledges a primary duty of absolute fidelity to protect and promote the interests of the client or clients.

(2) The licensee’s duty includes without limitation the obligation to:

(A) Use reasonable efforts to further the interest of the client;

- (B) Exercise reasonable skill and care in representing the client and carrying out the responsibilities of the agency relationship;
 - (C) Perform the terms of the written agency agreement;
 - (D) Follow lawful instructions of the client unless doing so would expose the licensee to liability from another party to a contract, lease, or rental agreement;
 - (E) Perform all duties specified in this section in a manner that demonstrates loyalty to the interests of the client;
 - (F) Comply with all requirements of this section and other applicable statutes, rules, and regulations;
 - (G) Disclose to the client material facts of the transaction that the licensee is aware of or should be aware of in the exercise of reasonable skill and care and that are not confidential information under a current or prior agency or dual agency relationship;
 - (H) Advise the client to obtain expert advice concerning material matters when necessary or appropriate;
 - (I) Account in a timely manner for all moneys and property received in which the client has or may have an interest;
 - (J) Keep confidential all confidential information; and
 - (K) Refrain from disclosing confidential information to a licensee who is not an agent of the client.
- (c) The duties required of a licensee under this section may not be waived by a client.

History. Acts 2011, No. 877, § 1.

17-42-317. Representing seller or lessor in an agency relationship.

(a) When representing a seller or lessor in an agency relationship, a licensee shall:

- (1)(A) Use reasonable efforts to obtain a purchase or lease offer at a price and with terms acceptable to the seller or lessor.
- (B) Unless requested by the seller or lessor, the licensee is not obligated to seek additional offers if the property is subject to a contract of sale, lease, or letter of intent to lease;
- (2) Accept delivery of and present an offer to the seller or lessor in a timely manner, regardless of whether or not the property is subject to a contract of sale, lease, or letter of intent to lease;
- (3) Within the scope of knowledge required for licensure, but without violating the limits of the licensee's authority:
 - (A) Answer the seller's or lessor's questions regarding the steps the seller or lessor must take to fulfill the terms of a contract; and
 - (B) Provide information to the seller or lessor regarding offers or counteroffers of which the licensee has actual knowledge; and
- (4) Assist the seller or lessor in developing, communicating, and presenting offers or counteroffers.

(b) A licensee does not breach a duty or an obligation to a seller or lessor with whom the licensee has an agency relationship by showing

alternative properties to a prospective buyer or by acting as an agent or subagent for other sellers or lessors.

(c) This section does not permit a licensee to perform any act or service that constitutes the practice of law.

History. Acts 2011, No. 877, § 1.

17-42-318. Representing buyer or lessee in an agency relationship.

(a) When representing a buyer or lessee in an agency relationship, a licensee shall:

(1)(A) Use reasonable efforts to locate a property at a price and with purchase or lease terms acceptable to the buyer or lessee.

(B) Unless requested by the client, the licensee is not obligated to seek additional purchase or lease possibilities if the buyer or lessee has contracted to purchase or lease or has extended a letter of intent to lease suitable property;

(2) Within the scope of knowledge required for licensure, but without violating the limits of the licensee's authority:

(A) Answer the buyer's or lessee's questions regarding the steps the buyer must take to fulfill the terms of any contract; and

(B) Provide information to the buyer or lessee regarding offers or counteroffers;

(3) Assist the buyer or lessee in developing, communicating, and presenting offers or counteroffers; and

(4) In a timely manner:

(A) Present an offer to purchase or lease to the seller or lessor or their agent, regardless of whether or not the property is subject to a contract of sale, lease, or letter of intent to lease; and

(B) Accept delivery of and present any counteroffers to the buyer or lessee.

(b) If a dual or multiple agency relationship is disclosed under § 17-42-108, a licensee does not breach a duty or an obligation to the buyer or lessee by:

(1) Showing property to other buyers or lessees; or

(2) Acting as an agent or subagent for other buyers or lessees or as an agent or subagent for sellers or lessors.

(c) This section does not permit a licensee to perform any act or service that constitutes the practice of law.

History. Acts 2011, No. 877, § 1.

17-42-319. Waiver of agency duties.

(a) A licensee shall perform the duties required under § 17-42-317 or § 17-42-318 unless the client agrees to waive these duties and signs a waiver of duties statement that contains:

(1) A list of the fiduciary duties required of all licensees under § 17-42-316;

- (2) A list of the duties contained in § 17-42-317 or § 17-42-318 set forth in a manner that allows for the parties to indicate each duty that is being waived; and
- (3) The following language in at least 10-point boldface type:

“Agreement to Waive

By signing below, I agree that the real estate licensee who represents me will not perform the duties that are initialed above. I also understand that in a proposed real estate transaction, no other real estate licensee will perform the waived duties, and I realize that I may need to hire other professionals such as an attorney.

_____ Signature of Client	_____ Date
_____ Signature of Licensee	_____ Date”

- (b) If a licensee enters into an agency relationship containing the waivers outlined in this section, all reasonable efforts must be taken to inform other licensees that:
- (1) Any moneys of others, including without limitation earnest money, advance fees, or security deposits are not to be transmitted or kept by the licensee, notwithstanding other applicable statutes and rules; and
- (2) A licensee for a buyer or lessee remains authorized to present offers to buy, lease, or rent real property directly to the licensee’s principal notwithstanding a:
- (A) Waiver under subsection (a) of this section; or
- (B) Conflicting statute or rule.

History. Acts 2011, No. 877, § 1.

CHAPTER 43

SANITARIANS

SUBCHAPTER.

3. CERTIFICATE OF REGISTRATION.

SUBCHAPTER 3 — CERTIFICATE OF REGISTRATION

SECTION.	
17-43-309. Grounds for suspension, revocation, or refusal to renew	— Duty of board to hire independent investigator — Scope of investigation.

Effective Dates. Acts 2011, No. 295, § 6: July 1, 2011. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2011 is essential to the

operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2011 could work irreparable harm upon the proper administration and provision

of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2011."

17-43-309. Grounds for suspension, revocation, or refusal to renew — Duty of board to hire independent investigator — Scope of investigation.

(a) The Arkansas State Board of Sanitarians may suspend, revoke, or refuse to renew a certificate of registration upon proof that the applicant:

- (1) Is not of good character; or
- (2) Is guilty of fraud, deceit, gross negligence, incompetency, or misconduct in relation to his or her duties as a sanitarian.

(b)(1) When necessary to determine whether grounds exist under this section to suspend, revoke, or refuse to renew a certificate of registration, the board shall hire and fix the compensation of an independent investigator to perform the investigation.

(2) The scope of the investigation shall not exceed matters that are reasonably necessary to determine whether grounds exist under this section to suspend, revoke, or refuse to renew a certificate of registration.

History. Acts 1957, No. 281, § 17; A.S.A. 1947, § 71-1617; Acts 2011, No. 295, § 2.

added "Duty of board to hire independent investigator — Scope of investigation" in the section heading; and added the (a) designation and (b).

Amendments. The 2011 amendment

CHAPTER 44

SCRAP METAL DEALERS

SECTION.

17-44-102. Records required.

17-44-103. [Repealed.]

SECTION.

17-44-106. Penalties.

17-44-102. Records required.

(a) As used in this section, "reasonable, written documentation" means a written document that includes the following information provided by the seller of the scrap metal to the scrap metal recycler:

- (1) The name of the entity or individual from whom the seller acquired the scrap metal;
- (2) The date the seller acquired the scrap metal;
- (3) The physical address from where the seller acquired the scrap metal;

(4) An affirmation or certification from the seller in the written document that he or she is the owner of the scrap metal or is the employer, agent, licensed contractor, licensed HVACR, plumber, electrician, or other person authorized to sell the scrap metal on behalf of the owner; and

(5) An affirmation or certification from the seller in the written document that he or she has not pleaded guilty or nolo contendere to or been found guilty of theft, burglary, or vandalism when the offense involved scrap metal.

(b) A seller shall not sell and a scrap metal recycler shall not purchase scrap metal unless reasonable, written documentation is provided that the seller is the owner of the scrap metal or is an employee, agent, or other person authorized to sell the scrap metal on behalf of the owner.

(c)(1) Each scrap metal recycler doing business in the State of Arkansas shall maintain an accurate and legible record of each scrap metal purchase transaction.

(2) Individual records shall not be required for a series of scrap metal purchase transactions made under a contract.

(3) The data required under subdivision (d)(1) of this section may be maintained for repeat sellers in a relational database allowing the scrap metal recycler to record the information one (1) time and relate future purchase records to that information.

(4) A municipality or county may require by ordinance electronic or digital records and reporting methods.

(d) The record of each scrap metal purchase transaction shall contain the following information taken at the time of sale and kept on record:

(1) The name, address, gender, birth date, and identifying number from the seller's driver's license, military identification card, passport, or other form of government-issued photo identification;

(2) A photocopy of the government-issued photo identification provided under subdivision (d)(1) of this section;

(3) The date of the scrap metal purchase transaction;

(4) The digital thumbprints of the seller;

(5)(A) A general description of the predominant types of scrap metal purchased.

(B) The general description shall be made in accordance with the custom of the trade;

(6) A general description of the configuration of the scrap metal and whether the material is insulated;

(7) The weight, quantity, or volume, recorded in accordance with the custom of the trade, of the scrap metal purchased;

(8) The consideration paid;

(9) The license plate number of the vehicle used in transporting the materials to the scrap metal recycler's place of business; and

(10)(A) A clearly identifiable date-and-time-stamped digital photograph of the:

(i) Seller; and

(ii) Scrap metal in the form in which it was purchased.

(B) The name of the person taking the photographs under this subdivision (10) shall be recorded and provided with the photographs.

(e) The photocopy required under subdivision (d)(2) of this section, the digital thumbprints required under subdivision (d)(4) of this section, and the digital photographs taken required under subdivision (d)(10)(A) of this section shall be reasonably clear.

(f)(1) For records required under subsections (a) and (d) of this section, a scrap metal recycler shall file a daily electronic record of scrap metal purchases made for that day.

(2) The report shall be made daily by entering the information into an automated database which may be interfaced by law enforcement statewide.

(g) The records required under this section shall be:

(1) Kept for a period of one (1) year;

(2) Made available to any law enforcement office of the State of Arkansas and any Arkansas municipality or county; and

(3) Available for use in any legal proceeding.

(h) This section does not apply to transactions:

(1) In which a scrap metal processor purchases, transfers, or otherwise conveys scrap metal to another scrap metal processor if the purchaser or transferee obtained a bill of sale or similar document at the time of transfer;

(2) Involving only beverage or food containers; or

(3) Involving only ferrous metals.

History. Acts 1969, No. 148, §§ 1-3; A.S.A. 1947, §§ 71-1501.1 — 71-1501.3; Acts 2005, No. 1994, § 399; 2007, No. 749, § 2; 2009, No. 390, § 2; 2011, No. 1193, § 2.

Amendments. The 2011 amendment inserted present (a) and (b), deleted former (e), and redesignated the remaining subsections accordingly; substituted

“subdivision (d)(1)” for “subdivision (b)(1)” in present (c)(3) and (d)(2); inserted “clearly identifiable” in (d)(10)(A); in (e), substituted “subdivision (d)(2)” for “subdivision (b)(2),” “subdivision (d)(4)” for “subdivision (b)(4),” and “subdivision (d)(10)(A)” for “subdivision (b)(10)(A);” and substituted “subsections (a) and (d)” for “subsection (b)” in (f)(1).

17-44-103. [Repealed.]

Publisher's Notes. This section, concerning restrictions on the purchase of certain items, was repealed by Acts 2011, No. 1193, § 3. The section was derived from Acts 1975, No. 583, §§ 1-3; A.S.A.

1947, §§ 71-1501.4 — 71-1501.6; Acts 1991, No. 669, § 1; 2005, No. 1994, § 228; 2007, No. 749, § 3; 2009, No. 390, § 3; 2011, No. 348, § 1.

17-44-106. Penalties.

(a) A person that violates this chapter may be assessed a civil penalty of no more than five hundred dollars (\$500) per violation.

(b) Any person that knowingly gives false information with respect to the matters required to be maintained in the records provided for in this chapter is guilty of a Class A misdemeanor.

History. Acts 2007, No. 749, § 6; 2009, No. 390, § 4; 2011, No. 1193, § 4.

Amendments. The 2011 amendment rewrote (a).

CHAPTER 48

SURVEYORS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REGISTRATION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-48-101. Definitions.

17-48-101. Definitions.

As used in this chapter:

(1)(A) “Firm” means a form of business entity that offers professional surveying services of its licensed personnel to the public.

(B) “Firm” does not include an individual licensee operating under his or her name;

(2)(A) “Land surveying” means a service comprising the:

(i) Determination of the location of land boundaries and land boundary corners; and

(ii) Preparation of:

(a) Plats showing the shape and areas of tracts of land and their subdivision into smaller tracts;

(b) Plats showing the location of streets, roads, and rights-of-way of tracts to give access to smaller tracts; and

(c) Official plats or maps of land thereof in this state.

(B) “Land surveying” does not include the measure of acreage of timber, cotton, rice, or other agricultural crops.

(C) A person practices or offers to practice land surveying if the person:

(i) Engages in land surveying for others; or

(ii) By verbal claim, sign, letterhead, card, telephone listing, or in any other way represents himself or herself:

(a) To be a professional surveyor; or

(b) As able to perform land surveying in this state;

(3) “Metadata” means a description of the content, ancestry and source, quantity, database schema, and accuracy of digital map data;

(4) “Professional surveyor” means a person who by reason of special knowledge of mathematics, surveying principles and methods, and legal requirements that are acquired by educational or practical experience is qualified to engage in the practice of land surveying and surveying measurement certification;

(5) “Responsible charge” means direct control of, supervision of, and legal responsibility for the surveying work performed; and

(6) “Surveying measurement certification” means providing the professional service of certification or sealing of maps, documents, digital files, or other data to verify that the maps, documents, digital files, or other data are authoritative professional determinations based on accepted methods and principles of surveying measurement or analysis representing or listing the following types of surveying measurements:

(A) The configuration or contour of the earth’s surface or the position of fixed objects on the earth’s surface;

(B) The position or elevation of a survey boundary, control monument, or reference point; and

(C) The alignment or elevation of a fixed work embraced within the practice of professional engineering.

History. Acts 1967, No. 101, § 2; A.S.A. 1947, § 71-2302; Acts 2005, No. 1178, § 7; 2005, No. 1962, § 74; 2009, No. 444, § 5; 2011, No. 898, § 1.

Amendments. The 2011 amendment substituted “educational” for “education” in (4); and inserted (5) and redesignated the following subdivision accordingly.

17-48-106. Failure to file boundary survey.

CASE NOTES

Revocation of License Proper.

Arkansas Board of Registration for Professional Engineers and Land Surveyors’ decision to revoke a surveyor’s license was proper as substantial evidence supported findings of the surveyor’s gross negligence under subsection (a) of this section and

that he violated the standards of conduct under § 17-48-205 in failing to perform work for a client. *Gilmore v. Ark. Bd. of Registration for Prof’l Eng’rs & Land Surveyors*, 2011 Ark. App. 139, — S.W.3d — (2011).

SUBCHAPTER 2 — REGISTRATION

SECTION.

17-48-203. Qualifications — Certification.

17-48-204. Expiration and renewal — Inactive status — Reinstatement.

17-48-205. Administrative violations and penalties.

SECTION.

17-48-206. Continuing education requirements.

17-48-208. Disciplinary action — Procedures.

17-48-203. Qualifications — Certification.

(a) A person who shows to the satisfaction of the State Board of Licensure for Professional Engineers and Professional Surveyors that he or she is a person of good character and reputation and over twenty-one (21) years of age shall be eligible for licensure as a professional surveyor if he or she qualifies under one (1) of the following provisions:

(1) A person holding a certificate of licensure to engage in the practice of land surveying issued to him or her on the basis of a written examination by proper authority of a state, territory, possession of the

United States, the District of Columbia, or any foreign country, based on requirements and qualifications as shown on his or her application that in the opinion of the board are equal to or higher than the requirements of this chapter may be licensed at the discretion of the board;

(2)(A) A graduate from an approved engineering curriculum with sufficient surveying courses or a surveying technology curriculum of two (2) years or more approved by the board, followed by at least two (2) years of land surveying that must be surveying experience of a character satisfactory to the board, who has passed a written examination designed to show that he or she is qualified to practice land surveying in this state, may be licensed if he or she is otherwise qualified.

(B) Each year of teaching land surveying in an approved engineering or surveying curriculum may be considered as equivalent to one (1) year of land surveying experience; or

(3)(A) An applicant who cannot qualify under subdivision (a)(2) of this section and who has six (6) years or more of active experience in land surveying of a character satisfactory to the board and who has passed a written examination designed to show that he or she is qualified to practice land surveying may be granted a certificate of licensure to practice land surveying in this state if he or she is otherwise qualified.

(B) Each year of satisfactory work in an approved engineering or engineering technology curriculum majoring in surveying may be considered as one (1) year of experience in land surveying, but not exceeding two (2) years.

(b) Effective January 1, 2017, an applicant for licensure as a professional surveyor shall qualify under one (1) of the following provisions:

(1)(A) A graduate holding a baccalaureate degree from a curriculum of four (4) years or more who has completed at least thirty (30) semester credit hours or the equivalent, as approved by the board, in courses involving land surveying, mapping, and real property, as approved by the board, followed by three (3) years or more of experience in responsible charge of land surveying under the supervision of a professional surveyor and who has passed an examination for certification as a surveyor intern shall be admitted to sit for a written examination in a form approved by the board.

(B) An applicant who is otherwise qualified shall be granted licensure as a professional surveyor upon passing the written examination; or

(2)(A) A graduate holding an associate of science degree in surveying or an associate of applied science in surveying degree from a program approved by the board or its equivalent, as approved by the board, followed by six (6) years or more of experience in responsible charge of land surveying under the supervision of a professional surveyor, and who has passed an examination for certification as a surveyor intern shall be admitted to sit for a written examination in a form approved by the board.

(B) An applicant who is otherwise qualified shall be granted licensure as a professional surveyor upon passing the written examination.

(c) A person who shows to the satisfaction of the board that he or she is a person of good character shall be eligible for licensure as a surveyor intern if he or she qualifies under one (1) of the following provisions:

(1) A person holding a certificate of licensure as a surveyor intern issued to him or her on the basis of a written examination by proper authority of a state, territory, possession of the United States, the District of Columbia, or any foreign country, based on requirements and qualifications as shown on his or her application, which requirements and qualifications, in the opinion of the board, are equal to or higher than the requirements of this chapter, may be licensed as a surveyor intern at the discretion of the board;

(2) A graduate from an approved engineering curriculum with sufficient surveying courses, or a surveying technology curriculum of two (2) years or more, approved by the board, who has passed a written examination designed to show that he or she is proficient in surveying fundamentals, may be licensed if he or she is otherwise qualified; or

(3)(A) An applicant who cannot qualify under subdivision (c)(2) of this section and who has four (4) years or more of active experience in land surveying of a character satisfactory to the board and who has passed a written examination designed to show that he or she is proficient in surveying fundamentals may be licensed if he or she is otherwise qualified.

(B) Each year of satisfactory work in an approved engineering or engineering technology curriculum majoring in surveying may be considered as one (1) year of experience in land surveying, but not exceeding two (2) years.

(d) Effective January 1, 2017, an applicant for licensure as a surveyor intern shall qualify under one (1) of the following:

(1)(A) A graduate holding or a student enrolled in the last year of a program leading to a baccalaureate degree from a curriculum of four (4) years or more who has finished at least thirty (30) semester credit hours, or the board-approved equivalent, in courses approved by the board involving land surveying, mapping, and real property shall be admitted to sit for a written examination in a form approved by the board.

(B) An applicant who is qualified shall be granted licensure as a surveyor intern on:

(i) Passing the written examination; and

(ii) Providing proof of graduation with a board-approved baccalaureate degree; or

(2)(A) A graduate holding or student enrolled in the last year of a program leading to an associate of science or an associate of applied science degree in surveying from a program approved by the board shall be admitted to sit for a written examination in a form approved by the board.

(B) An applicant who is qualified shall be granted licensure as a surveyor intern on:

- (i) Passing the written examination; and
- (ii) Providing proof of graduation with a board-approved associate of science or associate of applied science degree.

History. Acts 1967, No. 101, § 4; 1977, No. 807, § 2; A.S.A. 1947, § 71-2304; Acts 2005, No. 1178, § 12; 2009, No. 392, § 1; 2009, No. 444, § 7; 2011, No. 898, § 2. inserted "or a student enrolled in the last year of a program leading to" in (d)(1)(A) and (d)(2)(A); and inserted (d)(1)(B)(i) and (d)(2)(B)(ii).

Amendments. The 2011 amendment

17-48-204. Expiration and renewal — Inactive status — Reinstatement.

(a) All certificates shall be renewed annually or biennially at the discretion of the State Board of Licensure for Professional Engineers and Professional Surveyors.

(b) Certificates of licensure for professional surveyors and professional surveyor interns shall be renewed by the board to persons who are holders of certificates issued under this chapter who have furnished evidence satisfactory to the board of compliance with the requirements of § 17-48-206(a).

(c)(1)(A) Notwithstanding subsection (b) of this section, a professional surveyor or surveyor intern licensed under this chapter who is not engaged in the practice of land surveying may request in writing that the board place his or her name on the board's inactive roll, thereby granting him or her inactive status and protecting his or her right to obtain a certificate of licensure under subsection (b) of this section at such later time as he or she may wish to become engaged in the practice of land surveying.

(B) Inactive status shall continue as long as the licensee pays the annual fee under the board's rules.

(2) A professional surveyor whose license is inactive may return to active status by:

(A) Notifying the board in advance of his or her intention to return to active status;

(B) Paying the appropriate fees; and

(C) Meeting all requirements of the board, including demonstration of continuing professional competency.

(d) A professional surveyor or surveyor intern whose certificate of licensure is not renewed may have it reinstated by meeting the requirements of the board, depending on the time of nonrenewal under the rules of the board. The requirements the board may consider are:

- (1) Payment of fees and penalties;
- (2) Demonstration of continuing professional competency; and
- (3) Reexamination.

History. Acts 1967, No. 101, § 7; 1977, No. 807, § 4; A.S.A. 1947, § 71-2306; Acts 1987, No. 1070, § 1; 1997, No. 1297, § 2; 2001, No. 591, § 4; 2005, No. 1178, § 13; 2009, No. 444, § 7; 2011, No. 898, § 3.

Amendments. The 2011 amendment

inserted “depending on the time of nonrenewal under the rules of the board” in the introductory language of (d); added “and penalties” in (d)(1); and deleted (d)(2) and redesignated the remaining subdivisions accordingly.

17-48-205. Administrative violations and penalties.

(a) The State Board of Licensure for Professional Engineers and Professional Surveyors may suspend, revoke, or refuse to issue, restore, or renew a certificate of licensure of, or place on probation, fine, or reprimand a professional surveyor who is:

(1) Found guilty of:

(A) Fraud or deceit in obtaining, attempting to obtain, or renewing a certificate of licensure or certificate of authorization;

(B) Negligence, incompetency, or misconduct in the practice of surveying;

(C) Failure to comply with this chapter, the rules of the board, or an order of the board;

(D) Discipline by another state, territory, the District of Columbia, a foreign, the United States Government, or any other governmental agency, if at least one (1) of the grounds for discipline is the same or substantially equivalent to those contained in this section;

(E) Failure within thirty (30) days to provide information requested by the board as a result of a formal or informal complaint to the board that would indicate a violation of this chapter;

(F) Knowingly making false statements or signing false statements, certificates, or affidavits to induce payment;

(G) Aiding or assisting another person in violating this chapter or the rules of the board;

(H) Violating a term of probation imposed by the board;

(I) Using a seal or practicing surveying while the professional surveyor’s license is suspended, revoked, nonrenewed, or inactive;

(J) Signing, affixing the professional surveyor’s seal, or permitting the professional surveyor’s seal or signature to be affixed to an instrument of practice that has not been prepared or completely checked by the professional surveyor or under the professional surveyor’s direct supervision or control;

(K) Engaging in dishonorable, unethical, or unprofessional conduct of character likely to deceive, defraud, or harm the public;

(L) Providing false testimony or information to the board; or

(M) Habitual intoxication or addiction to the use of drugs or alcohol;

(2) Found guilty of or enters a plea of guilty or nolo contendere to:

(A) A felony;

(B) A crime of which an essential element is dishonesty; or

(C) A crime that is directly related to the practice of surveying; or

(3) Subject to disciplinary action by another state, territory, the District of Columbia, a foreign country, the United States Government,

or other governmental agency, if at least one (1) of the grounds for discipline is the same or substantially equivalent to those contained in this section.

(b) The board may take the following action against a professional surveyor:

- (1) Suspend or revoke a certificate of licensure;
- (2) Refuse to issue, restore, or renew a certificate of licensure;
- (3) Place on probation, impose a fine, or reprimand; or
- (4) A combination of the above.

(c) A person that violates this chapter or a rule of the board shall pay a civil penalty to the board of not more than five thousand dollars (\$5,000) for each offense.

(d)(1) The board shall adopt rules of professional conduct under § 17-48-104 that are to be provided to an applicant for licensure.

(2) The board may amend these rules of professional conduct from time to time and shall notify each licensee in writing of the amendments.

(e) The board may:

- (1) Revoke a certificate of authorization;
- (2) Suspend a certificate of authorization for a time not exceeding two (2) years of a firm when one (1) or more of its officers or directors have been found guilty of conduct that would authorize a revocation or suspension of their certificates of licensure under this section;
- (3) Place a firm on probation for a period and subject to the conditions as the board may specify; or
- (4) Levy a fine in an amount not more than five thousand dollars (\$5,000) for each offense.

(f) The board may levy a fine in an amount not more than five thousand dollars (\$5,000) for each offense against nonlicensees that violate this chapter.

History. Acts 1967, No. 101, § 9; 1977, No. 807, § 5; A.S.A. 1947, § 71-2308; Acts 2005, No. 1178, § 14; 2009, No. 444, § 7; 2011, No. 898, § 4.

Amendments. The 2011 amendment rewrote the section and section heading.

CASE NOTES

Revocation of License Proper.

Arkansas Board of Registration for Professional Engineers and Land Surveyors' decision to revoke a surveyor's license was proper as substantial evidence supported findings of the surveyor's gross negligence

under § 17-48-106(a) and that he violated the standards of conduct under this section in failing to perform work for a client. *Gilmore v. Ark. Bd. of Registration for Prof'l Eng'rs & Land Surveyors*, 2011 Ark. App. 139, — S.W.3d — (2011).

17-48-206. Continuing education requirements.

(a)(1) The State Board of Licensure for Professional Engineers and Professional Surveyors shall issue rules establishing the continuing education requirements for professional surveyors and surveyor interns.

(2) The rules shall take into account the accessibility to applicants of the board's continuing education requirements.

(3) The rules may:

(A) Rely upon guidelines and pronouncements of recognized educational and professional associations;

(B) Prescribe the content, duration, and organization of courses;

(C) Provide for the relaxation or suspension of requirements for:

(i) Applicants who certify that they do not intend to engage in the practice of surveying; and

(ii) Instances of individual hardship;

(D) Exempt from licensed continuing education requirements a professional surveyor sixty (60) years of age or older with twenty (20) or more years of experience as a practicing professional surveyor; and

(E)(i) Prescribe the manner and condition under which credit shall be given for participation in a program of continuing education that the board considers necessary and appropriate to maintain competency in the practice of surveying.

(ii) Examples of programs of continuing education that are acceptable include without limitation programs or seminars sponsored by higher educational institutions, government agencies, and professional surveying organizations and related professions.

(b)(1) An application for renewal of a certificate of licensure shall be accompanied by evidence documenting the completion of acceptable continuing education credit during the previous renewal period.

(2) Failure by an applicant to provide this evidence upon request by the board is grounds for disciplinary action unless the board determines the failure is due to a reasonable cause or the applicant was not engaged in the practice of surveying during the previous renewal period.

(3) The board may renew a certificate of licensure despite an applicant's failure to furnish satisfactory evidence of meeting continuing education requirements and may issue a certificate of licensure to an applicant who has previously maintained inactive status under § 17-48-204(c) if the applicant follows a particular program or schedule of continuing education prescribed by the board.

History. Acts 1987, No. 1070, § 1; **Amendments.** The 2011 amendment 2005, No. 1178, § 15; 2009, No. 444, § 7; rewrote the section. 2011, No. 898, § 5.

17-48-208. Disciplinary action — Procedures.

(a) The rules promulgated by the State Board of Licensure for Professional Engineers and Professional Surveyors for disciplinary procedures shall be based on and consistent with the model rules of procedure of the Attorney General.

(b) A charge, unless dismissed or settled informally, is to be heard by the board within twelve (12) months after the date on which the charge was submitted.

(c)(1) A fine or civil penalty not paid within fifty (50) days after the order becomes final is a judgment.

(2) The order is to be filed as a judgment and executed in the same manner as other judgments.

(d) The board, on petition of an individual licensee or firm holding a certificate of authorization, may reissue a certificate of licensure or authorization if a majority of the members of the board vote for the issuance.

History. Acts 2011, No. 898, § 6.

CHAPTER 54

ARKANSAS MOLD INVESTIGATOR LICENSING ACT

SECTION.

17-54-101 — 17-54-104. [Repealed.]

17-54-101 — 17-54-104. [Repealed.]

A.C.R.C. Notes. Acts 2011, No. 341, § 1, provided: “Mold Investigation Advisory Board — Creation — Duties.

“(a) The Mold Investigation Advisory Board is created.

“(b) The board shall consist of nine (9) members as follows:

“(1) One (1) member of the Senate appointed by the President Pro Tempore of the Senate;

“(2) One (1) member of the House of Representatives appointed by the Speaker of the House of Representatives;

“(3) Seven (7) members appointed by the Governor as follows:

“(A) One (1) member to represent the State Plant Board;

“(B) One (1) member to represent the Department of Health;

“(C) One (1) member to represent the Department of Labor;

“(D) One (1) member to represent the Arkansas Realtors Association;

“(E) One (1) member to represent the Arkansas Association of Real Estate Inspectors;

“(F) One (1) member to represent the Arkansas Pest Management Association; and

“(G) One (1) member who is a licensed mold inspector.

“(c) The members of the Mold Investigation Advisory Board shall serve until December 31, 2012.

“(d) The Mold Investigation Advisory

Board shall select from its membership a chair and a vice-chair.

“(e)(1) The members of the Mold Investigation Advisory Board shall hold the first meeting in offices made available by the State Plant Board within thirty (30) days of the appointment of the members of the Mold Investigation Advisory Board.

“(2) The Mold Investigation Advisory Board shall meet quarterly or more often at the call of the chair or vice-chair.

“(f)(1) A majority of the membership of the Mold Investigation Advisory Board shall constitute a quorum.

“(2) A majority vote of the members present is required for any action of the Mold Investigation Advisory Board.

“(g) A vacancy on the Mold Investigation Advisory Board due to death, resignation, removal, or other causes shall be filled in the same manner as for the initial appointment.

“(h) The members of the Mold Investigation Advisory Board may be removed for cause by the appointing official.

“(i)(1) The Mold Investigation Advisory Board shall study:

“(A) The effects on the public health and safety of existing statutes and rules regarding mold investigations and remediation; and

“(B) Approaches to changing existing statutes to better meet the needs of Arkansas citizens.

“(2) By December 31, 2012, the Mold Investigation Advisory Board shall report

its findings and proposals for new legislation to:

“(A) The State Plant Board;

“(B) The chair of the House Committee on Public Health, Welfare, and Labor and the chair of the Senate Committee on Public Health, Welfare, and Labor; and

“(C) The Governor.

“(j) The Mold Investigation Advisory Board shall be abolished on December 31,

2012.”

Publisher’s Notes. This chapter was repealed by Acts 2011, No. 518, § 1. The chapter was derived from the following sources:

17-54-101. Acts 2009, No. 1467, § 1.

17-54-102. Acts 2009, No. 1467, § 1.

17-54-103. Acts 2009, No. 1467, § 1; 2011, No. 859, § 9.

17-54-104. Acts 2009, No. 1467, § 1.

